IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.9.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

Tax Case (Appeal) No.625 of 2016

Principal Commissioner of Income Tax,
No.121, Mahatma Gandhi Road,
Chennai. Appellant /Respondent

Vs.

M/s.Macro Marvel Projects Ltd.,
813, Glenden Place,
Poonamallee High Road,
Kilpauk, Chennai 600 010.
PAN: AAC CM 8816 D Respondent/Appellant

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'B' Bench, Chennai, dated 20.1.2016 made in ITA No.2092/Mds/2015 as against the order dated 31/08/2015 of the Commissioner of Income Tax (Appeals) in ITA.No. 22/14-15 for the Assessment Year 2005-06, and as against the order dated 07/03/2014 of the Deputy Commissioner of Income Tax, Chennai for the Assessment year 2006-06 in PAN/GIR.No. AACM8816D.

For Appellant : Mr.Karthik Ranganathan
Senior Standing Counsel

For Respondent : Ms.Sumitha for Mr.R.Sivaraman

J U D G M E N T
(Delivered by DR.VINEET KOTHARI,J)

This Tax Case Appeal has been filed by the Revenue, calling in question the correctness of the order passed by the Income Tax Appellate Tribunal, 'B' Bench, Chennai, dated 20.1.2016 made in ITA No.2092/Mds/2015, for the Assessment Year 2005-2006, by raising the following substantial questions of law:

"(i) Whether on the facts and circumstances of the case, the ITAT was right in law in deleting the disallowance made u/s.40(a)(ia) in the year under consideration as the statutory provisions are amply clear and in the context of section 40(a)(ia) of the Act, the term 'payable' would include amounts which are paid during the previous year?

(ii) Whether on the facts and circumstances of the case, the ITAT was right in law in holding that the provision of section u/s.40(a)(ia) of the Act cover only the amounts which are payable as on 31st March of a previous year relevant to the assessment year under consideration and not amounts which are payable at any time during the relevant previous year?

(iii) Whether on the facts and circumstances of the case and in law, the ITAT erred in not appreciating and ignoring the ratio of decision in the case of Ryatar Sahakari Sakkare Karkhane Niyamit v. CIT (2016) 67 taxmann.com 283 (Karnataka) wherein it is held that section 40(a)(ia) cannot be interpreted to mean that it applies only to amounts "payable" and not to those which have been "paid"?

(iv) Whether on the facts and circumstances of the case and in law, the ITAT was correct in not appreciating and ignoring the ratio of decision in the case of CIT vs. M/s.Crescent Export Syndicate 216 Taxman 258(Cal) and CIT vs. Sekander Khan N Tunvar 33 Taxmann.com 133 (Gujarat) which constitutes ratio decidendi on the issue as discussed in order dated 02.08.2013 of Mumbai ITAT in the case of ACIT, Cir.4(2) Mumbai vs. Rishti Stock & Shares (P) Ltd - ITA No.112/Mum/2012 and further whether order of ITAT had turned perverse in view of ratio of decision in the case of Sudarshan Silk Sarees vs. CIT 306 ITR 205 (SC)?"

2. When the matter is taken up for hearing, learned Senior Standing Counsel brought to our notice the Circular instruction issued by the Central Board of Direct Taxes vide Circular No.17/2019 dated 8th August 2019, wherein, it is stipulated that appeals shall not be filed/pursued by the Department before the High Court in cases where the tax effect does not exceed Rs.1,00,00,000/- (Rupees One Crore). 3. In the instant case, the tax effect is said to be less than the monetary limit imposed and therefore, the Appeal filed by the

Revenue is dismissed, as withdrawn, keeping open the substantial questions of law for determination in appropriate cases. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

ssk.

To

1. Income Tax Appellate Tribunal,
'B' Bench, Chennai.

2. Principal Commissioner of Income Tax,
No.121, Mahatma Gandhi Road,
Chennai.

3. Dy. Commissioner of Income Tax,
Company Circle IV(1), Chennai.

4.The Commissioner of Income Tax, (Appeals),
Chennai - 34.

T.C.(A) No.625 of 2016

SVI(CO)
GN(21/10/2020)